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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,824	04/16/2004	Mario Ramirez Aguirre	Aguirre-Aoki	1738

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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,824

Applicant(s)

AGUIRRE ET AL.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/16/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to because in Figure 1, it appears that 30 should be 32 and 38 should be 30. Further, in Figure 1C it appears that a reference character 38 should be added and directed to the ring attaching the tether to the band (see the last paragraph of page 7). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: On lines 1 and 2 of page 8, it appears that "key ring" should be --staple-- and on line 2 of page 8 it appears that "Fig. 1C" should be --Fig. 1A--. Further, on the last line of page 11, "writing instrument 31" should be --writing instrument 30--. Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claims are replete with verbiage which is not present in the specification, i.e, the phrases "in multiple positions and angles" (claim 1) and "at an angle of ninety degrees" (claim 4) do not have antecedent basis in the specification. The Applicant should review all of the claims to ensure that the language present therein is also present in the specification.

The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology (i.e., "hook and loop fastener").

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it

pertains, or with which it is most nearly connected, to make and/or use the invention. The specification has not enabled a device that has more than one tether and/or more than one writing instrument holder.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-4 are replete with indefinite language that render the claims difficult to examine. For example, phrases such as "wristband/bracelet", "any attachment device", "any method" and "for example" render the claims indefinite. The claims should be carefully reviewed and revised to ensure that a complete and operative device is clearly defined therein.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Treadaway. In regard to claim 1, Treadaway discloses a writing instrument holding and retaining device comprised of a wristband 18 for securing a writing instrument not in use, a tether 15 attached to the wristband and a writing instrument holder (the link that connects the end of chain 15 to the writing instrument), an attachment device 26 for attaching the writing instrument to the wristband and an attachment device 29 for

attaching the tether to the wristband. In regard to claim 2, the writing instrument holder permits the writing instrument to "rotate freely" without entangling the tether.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treadaway in view of Stewart. In regard to claim 3, although the Treadaway reference does not disclose the specific attaching mechanism between the tether and the writing instrument, attention is directed to the Stewart reference, which discloses another writing instrument with a "tether" 4 attached via a ring secured to the writing instrument via a screw top 5 as claimed (see column 1, lines 47-50) in order to enable a user to conveniently mount the tether to the writing device. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to attach the tether in the Treadaway device via a similar connection in order to enable the user to conveniently secure the tether to the writing device. In regard to claim 4, the structure defined therein is considered to be a functional equivalent to the mechanism defined in claim 3, especially since the Applicant repeatedly discloses that any type of connecting mechanism can be employed to secure the tether to the writing instrument and has placed no criticality on the specific structure of the connecting mechanism.

Art Unit: 3751

Accordingly, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the structure defined in claim 4 can also be employed to attached the tether to the writing instrument without effecting the overall operation of the device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Holywell, Shackitt and Ziporyn references are cited for disclosing other writing instruments secured to a band via a tether.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
5/31/06